## STATE OF MICHIGAN

## COURT OF APPEALS

NORTH OTTAWA ROD & GUN CLUB, INC.,

UNPUBLISHED August 21, 2007

Petitioner-Appellant,

V

No. 268308 Tax Tribunal LC No. 00-298030

GRAND HAVEN CHARTER TOWNSHIP,

Respondent-Appellee.

\_\_\_\_

Before: Bandstra, P.J., and Cavanagh and Jansen, JJ.

## PER CURIAM.

Petitioner appeals by right the final judgment of the Michigan Tax Tribunal, which denied its request for a charitable institution exemption from ad valorem real and personal property taxes. We affirm.

This Court's authority to review a decision of the tax tribunal is limited. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). In the absence of fraud, our review of a tax tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). "The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record." *Michigan Milk Producers, supra* at 490-491.

MCL 211.1 provides that all real and personal property within the state is subject to taxation, unless expressly exempted. Real and personal property of a charitable institution may be exempt from taxation pursuant to MCL 211.70 and MCL 211.9. A petitioner seeking a charitable institution exemption must satisfy three elements: (1) the property must be owned and occupied by the petitioner, (2) the petitioner must be a nonprofit charitable institution, and (3) the property must be occupied by the petitioner solely for the purposes for which the petitioner was incorporated. Wexford Medical Group v Cadillac, 474 Mich 192, 203; 713 NW2d 734 (2006).

In the instant case, there is no dispute with regard to elements one and three. Nor is there any question that petitioner is a nonprofit organization. Rather, the issue on appeal is whether petitioner qualifies as a "charitable institution" pursuant to MCL 211.70 and MCL 211.9. Exemption statutes are strictly construed in favor of the taxing authority, *APCOA*, *Inc v Dep't of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995), and the taxpayer must prove that it

qualifies as a member of an exempt class by a preponderance of the evidence, *Holland Home v Grand Rapids*, 219 Mich App 384, 394-395; 557 NW2d 118 (1996).

In construing the meaning of the term "charitable institution," our Supreme Court has defined charity as

a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. [Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp, 416 Mich 340, 348-349; 330 NW2d 682 (1982) (emphasis in original).]

In applying a charitable institution exemption to a particular case, the proper focus is whether the organization's "activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." *MUCC v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985).

More recently, our Supreme Court has held that in determining whether an entity is a "charitable institution" for purposes of MCL 211.70 and MCL 211.9, several factors must be considered:

- (1) A "charitable institution" must be a nonprofit institution.
- (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
- (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
- (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people' bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year. [Wexford Medical Group, supra at 215.]

Petitioner's property contains a clubhouse, an indoor shooting range, and multiple outdoor shooting ranges. There are pistol, shotgun, skeet, and trap fields, as well as an archery range. Petitioner's purpose, according to its constitution and bylaws, is "[t]o support the conservation of wildlife and natural resources, provide recreational activities for [its] members, promote the shooting sports, and maintain our hunting and fishing heritage . . . ." Petitioner's membership is open to the public, and the membership fee is \$60 per year with an additional \$10 fee for first-time members. The subject property is open the same hours for members and nonmembers. However, nonmembers pay a \$5 daily fee to use the subject property. Petitioner's clubhouse is available for rent by the general public for a fee of \$400. In addition to providing its services and facilities for a cost, petitioner engages in certain conservation, educational, and humanitarian efforts. Petitioner also allows several law enforcement agencies to use its property for firearms training at no charge.

After considering all the relevant factors, we conclude that the tribunal's factual findings are supported by competent, material, and substantial evidence on the whole record. Petitioner argues that it qualifies as a charitable institution because its activities, taken as a whole, are charitable in nature and are intended to benefit the general public. While we recognize that petitioner engages in some conservation and humanitarian efforts, we agree with the tribunal that these efforts are de minimus. At the time of the hearing before the tribunal, petitioner's conservation activities were limited to planting trees once a year, releasing a small number of pheasants and quail into the wild once a year, and allowing conservation clubs to use its facilities free of charge. Petitioner's humanitarian activities, like its conservation efforts, primarily consisted of giving one-time gifts to charitable organizations and hosting charitable events once a year.

Furthermore, while petitioner's membership, facilities, and firearms courses are open to the public, they cannot be considered gifts to the general public without restriction. The subject property is only available to the general public for a fee. Petitioner also receives a fee for hosting hunter-safety classes, and while petitioner charges both members and nonmembers to take its concealed weapons classes, nonmembers must pay \$60 more than members. Moreover, petitioner admitted that it uses the fees it collects to award cash prizes to its members. Like the petitioner in *MUCC*, petitioner herein provides some services that may be considered charitable gifts, but primarily exists to serve the interests of its members. *MUCC*, *supra* at 674. In light of the similarity between the facts of *MUCC* and those of the present case, we cannot conclude that the tribunal erred in determining that petitioner is not a charitable institution. Cf. *Moorland Twp v Ravenna Conservation Club, Inc*, 183 Mich App 451, 459-460; 455 NW2d 331 (1990) (holding that the petitioner's activities constituted a gift to the general public without restriction because its property was always open to the public at no charge, it offered hunter-safety classes to the public at no charge, and it distributed a variety of materials to the public at no charge).

Petitioner also argues on appeal that it qualifies as a charitable institution because its activities reduce several government burdens. However, as previously indicated, petitioner's conservation efforts are de minimus, and therefore do not substantially reduce any burden that would otherwise fall upon the government. See *id.* at 460-461 (holding that the petitioner's activities reduced the government's burden to preserve natural resources and wildlife because the petitioner engaged in numerous conservation activities throughout the year and assisted the Department of Natural Resources on a regular basis). Similarly, although petitioner offers

recreational opportunities and firearm-safety courses at a charge, petitioner has failed to establish how these offerings substantially reduce the government's burden. *Retirement Homes*, *supra* at 348-349; see also *Moorland*, *supra* at 461. Finally, while petitioner allows law enforcement agencies to use its property for firearms training at no charge, petitioner has failed to establish that the government is required to provide law enforcement personnel with the specific type of training offered on the subject property. Because petitioner failed to prove that a government burden existed in the first instance with respect to this specific type of training, it ipso facto failed to prove that it has lessened a burden of government.

In sum, while petitioner engages in some charitable endeavors, its activities, viewed as a whole, do not benefit an indefinite number of persons or the general public without restriction. *MUCC*, *supra* at 673. Nor has petitioner shown that it is "organized chiefly, if not solely, for charity." *Wexford Medical Group*, *supra* at 215. Quite simply, petitioner's primary purpose is not to provide charitable services. Thus, even assuming arguendo that petitioner minimally lessens a government burden by offering firearms training facilities for law enforcement agencies, petitioner's activities primarily serve the interests of its members. The tribunal's factual findings were supported by competent, material, and substantial evidence on the whole record. *Mich Milk Producers*, *supra* at 490-491. We affirm the tribunal's determination that petitioner is not a charitable institution entitled to real and personal property tax exemptions under MCL 211.70 and MCL 211.9.<sup>1</sup>

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

\_

<sup>&</sup>lt;sup>1</sup> Petitioner argues that its position is supported by *Alpena Sportsmen's Club v Wilson Twp*, 9 MTTR 1, and *Fin & Feather Club of Mason Co v Sherman Twp*, unpublished opinion of the tax tribunal small claims division (Docket No. 297209). Specific tax tribunal decisions do not precedentially bind this Court because the tax tribunal is inferior to the Court of Appeals. See *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 23-24; 678 NW2d 619 (2004).